

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

DUSTY SEATON,

Petitioner,

v.

DIRECTOR, TDCJ-CID,

Respondent.

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Case No. 6:16-CV-1116-JDK-KNM

**ORDER ADOPTING REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

Petitioner Dusty Seaton, an inmate proceeding *pro se*, filed the above-styled and numbered petition for a writ of habeas corpus. This case was referred to United States Magistrate Judge K. Nicole Mitchell pursuant to 28 U.S.C. § 636. On December 12, 2019, Judge Mitchell issued a Report and Recommendation (Docket No. 33), recommending that Petitioner’s Motion to Alter or Amend the Judgment (Docket No. 30) be denied. *Id.* at 3. Petitioner filed Motions for Extension of Time to File Objections on December 26, 2019, and January 6, 2020. Docket Nos. 35–36. The Magistrate Judge granted both motions on February 18, 2020, and ordered Petitioner to file his objections no later than March 10, 2020. Docket No. 37. The Magistrate Judge also stated: “No further extensions of time will be granted unless upon a showing of exceptionally good cause.” *Id.* at 1.

To date, Petitioner has not filed objections. Instead, Petitioner filed another motion for extension of time to file objections on March 12, 2020. Docket No. 39. In his motion, he states that he received the Magistrate Judge’s order granting his first motion for extension on March 6, 2020—only four days before the March 10 deadline. *Id.* at 1. He also states that “[t]his extension is necessary to determine the appropriate response to the recommendations of the magistrate judge

and to gather necessary evidence, and recover lost files, (due to security), to support the objections.” *Id.* Under Federal Rule of Civil Procedure 6(b), “[w]hen an act may or must be done within a specified time, the court may, for good cause, extend the time . . . on motion made after the time has expired if the party failed to act because of excusable neglect.” Here, Petitioner has had ample time—about three months—to file objections to the Report and Recommendation and has failed to present “exceptionally good cause” or “excusable neglect” for his failure to file objections. Accordingly, Petitioner’s second motion for extension of time (Docket No. 39) to file objections is denied.

This Court reviews the findings and conclusions of the Magistrate Judge *de novo* only if a party objects within fourteen days of service of the Report and Recommendation. 28 U.S.C. § 636(b)(1). In conducting a *de novo* review, the Court examines the entire record and makes an independent assessment under the law. *Douglass v. United Servs. Auto. Ass’n*, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*), *superseded on other grounds by statute*, 28 U.S.C. § 636(b)(1) (extending the time to file objections from ten to fourteen days). Here, Petitioner did not file objections in the prescribed period. The Court therefore reviews the Magistrate Judge’s findings for clear error or abuse of discretion and reviews her legal conclusions to determine whether they are contrary to law. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989), *cert. denied*, 492 U.S. 918 (1989) (holding that, if no objections to a Magistrate Judge’s Report are filed, the standard of review is “clearly erroneous, abuse of discretion and contrary to law”).


Having reviewed the Magistrate Judge’s Report and Recommendation, the Court adopts the Report and Recommendation of the United States Magistrate Judge (Docket No. 33) as the findings of this Court.

Accordingly, it is hereby **ORDERED** that the Magistrate Judge's Report (Docket No. 33) be **ADOPTED**. It is further

ORDERED that Petitioner's Second Motion for Extension of Time (Docket No. 39) is **DENIED**. It is further

ORDERED that Petitioner's Motion to Alter or Amend the Judgment (Docket No. 30) is **DENIED**.

So **ORDERED** and **SIGNED** this **16th** day of **March, 2020**.



JEREMY D. KERNODLE
UNITED STATES DISTRICT JUDGE